

REMARKS/ARGUMENTS

The present application has been reviewed in light of the Office Action dated September 20, 2007. Claims 1-17, 19-22, and 25-32 are currently pending. By the present amendment, claims 1, 2, 15, 22, and 25-32 have been amended and claims 18, 23, and 24 have been canceled. Applicant respectfully submits that these amendments add no new matter, are fully supported by the specification and are allowable over the prior art of record. In light of these amendments and the remarks that follow, early and favorable reconsideration and allowance of this application is respectfully requested.

In the Office Action, claim 2 was rejected under 35 U.S.C. §112, second paragraph, as having an insufficient antecedent basis. Applicant has amended claim 2 to provide the necessary antecedent basis. Applicant now believes that claim 2 as amended herein overcomes the rejection under 35 U.S.C. §112, second paragraph.

Claims 1-9 and 12-14 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application No. 2003/0158555 to Sanders et al. (Sanders). It is respectfully submitted that independent claim 1, as amended, is allowable over Sanders because Sanders fails to disclose or teach each and every feature of independent claim 1.

Claim 1 relates to an absorbable screw, inter alia, with a the head portion having driver receiving structure formed in an outer radial surface thereof for transmitting both linear and rotational motion to the body portion. In contrast, Sanders discloses an absorbable screw fastener having a driver receiving structure in the proximal surface of the screw head. Sanders

fails to disclose or teach a “head portion having driver receiving structure formed in an outer radial surface thereof,” such as recited in independent claim 1.

Accordingly, it is respectfully submitted that claim 1, as amended, is patentable under 35 U.S.C. §102(e) over Sanders because Sanders fails to disclose or teach each and every feature of independent claim 1. Since claims 2-9 and 12-14 depend, directly or indirectly, from claim 1 and contain all the features of claim 1, it is respectfully submitted that claims 2-9 and 12-14 are also patentable under 35 U.S.C. §102(e) over Sanders.

Claims 23-27, 29, and 32 are rejected under 35 U.S.C. §102(e) as being anticipated by Sanders. Since claims 23 and 24 have been canceled herein, it is respectfully submitted that the rejection of claims 23 and 24 has been rendered moot. Rejection of claims 25-27, 29, and 32 is in error. Since claims 25-27, 29, and 32 depend from independent claim 22 that has been rejected on obviousness grounds, claims 25-27, 29, and 32 can not inherently be anticipated. Accordingly, the rejection of claims 25-27, 29, and 32 under 35 U.S.C. §102(e) as being anticipated by Sanders should be withdrawn.

Claims 15, 16, and 18-21 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,429,641 to Gotfried (Gotfried). Applicants submit that independent claim 15, as amended, is allowable over Gotfried because Gotfried fails to disclose or teach each and every feature of independent claim 15. Independent claim 15 presently recites an instrument capable of holding a plurality of absorbable fasteners and has “a driver/torque subassembly disposed within the outer tube and being movable relative to the outer tube including at least a pair of resilient force transmitting arms extending distally therefrom, wherein the arms are configured to

selectively retain a head of an absorbable screw therebetween and are configured to transmit both an axial and a rotational force to the absorbable screw.” Gotfried discloses a screw having a driver receiving configuration in the proximal surface of the head, which couples with a threaded section and a hexagonal section extending from the center of the driver/torque subassembly.

Gotfried fails to teach or disclose an instrument capable of holding a plurality of screws. Further, Gotfried fails to disclose, teach and/or suggest arms that retain and transmit an absorbable screw both axially and rotationally. Applicants therefore respectfully submit that, in view of the amendments made to claim 15 herein, and in view of the argument presented above, that claim 15 is allowable over Gotfried.

Since claims 16 and 18-21 depend, directly or indirectly, from claim 15, and contain all of the features of claim 15, for the reasons presented above regarding the patentability of claim 15, Applicant respectfully submits that claims 16 and 18-21 are also patentable under 35 U.S.C. §102(b) over Gotfried.

Claims 10 and 11 were rejected under 35 U.S.C §103(a) as being unpatentable over Sanders as applied to claim 1 above. Applicant respectfully submits that dependent claims 10 and 11 are allowable over Sanders since claims 10 and 11 depend directly from claim 1 and contain all the limitations of claim 1, and for the reasons presented above for the patentability of claim 1.

Claim 17 was rejected under 35 U.S.C §103(a) as being unpatentable over Gotfried as applied to claim 15. Applicant respectfully submits that dependent claim 17 is allowable over

Gotfried since claim 17 depends directly from claim 15 and contains all the limitations of claim 15, and for the reasons presented above for the patentability of claim 15.

Claim 22 was rejected under 35 U.S.C §103(a) as being unpatentable over Gotfried in view of Sanders. Applicant respectfully submits that independent claim 22, as amended, is patentable over Gotfried in view of Sanders, taken alone or in any proper combination because Gotfried taken in any proper combination with Sanders fails to render claim 22 obvious under 35 U.S.C §103(a).

Independent claim 22, as amended, recites an instrument with “a driver/torque subassembly disposed within the outer tube, the driver/torque subassembly including at least a pair of resilient force transmitting arms extending distally therefrom” and an absorbable screw having “a driver receiving configuration formed in a radial outer surface thereof for selective engagement with at least the pair of resilient force transmitting arms of the drive/torque subassembly, wherein the driver receiving configuration is configured for transmitting both linear and rotational motion to the body portion.”

As stated above, Godfried discloses a screw having a driver receiving configuration in the proximal surface of the head, which couples with a threaded section and a hexagonal section extending from the center of the driver/torque subassembly. The Examiner relies on Sanders for the teaching of an absorbable screw with body and head portions. Rather Sanders discloses an absorbable screw fastener having a driver receiving structure in the proximal surface of the screw head. Applicant submits that Gotfried can not properly be

combined with Sanders to render claim 22 obvious as Sanders to cure the deficiencies of Gotfried.

It is respectfully submitted that neither Gotfried nor Sanders teach or suggest a driver/torque subassembly having a plurality of resilient force transmitting arms. Accordingly, in view of the argument presented above, it is respectfully submitted that claim 22, is patentable over Gotfried in view of Sanders, either taken alone or in any proper combination.

Claims 25-27, 29, and 32 have been amended to depend, directly or indirectly, from claim 22. Applicants respectfully submit that dependent claims 25-27, 29, and 32 are allowable over Sanders since claims 25-27, 29, and 32 depend from claim 22 and contain all of the limitations of claim 22, and for the reason presented above for the patentability of claim 22.

Claims 28, 30, and 31 were rejected under 35 U.S.C §103(a) as being unpatentable over Sanders. Applicant respectfully submits that dependent claims 28, 30, and 31 are allowable over Sanders since claims 28, 30, and 31, as amended, depend, directly or indirectly, from claim 22 and contain all the limitations of claim 22, and for the reasons presented above for the patentability of claim 22.

Should the Examiner believe that a telephone interview may facilitate resolution of any outstanding issues, the Examiner is respectfully requested to telephone Applicants' undersigned attorney at the number indicated below.

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An early and favorable response in the merits is earnestly solicited.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'F. Sardone', is written over a horizontal line.

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